

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL /CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.4298 OF 2016

Radhika Shyam Dethe

.. Petitioner

Vs.

State of Maharashtra & Ors.

.. Respondents

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Mr.Ajinkya Palav a/w. Mr.Rahul Kapur I/b. M/s.The
Laureate, Advocate for the Petitioner.

Mr.Y.M. Nakhwa, APP for Respondent – State.

Mr.Shriram S. Kulkarni, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 3, 2018.

P.C. :

Heard both the sides for final disposal. The petition is preferred to set aside the proceedings initiated by respondent no.2 under Section 12 of the Protection of Women Domestic Violence Act, 2005 (hereinafter referred to as “the DV Act”, for short), in the Court of Judicial Magistrate First Class, Pune, vide Miscellaneous Application No. 1939 of 2016.

2 Petitioner no.1 is deleted as per Court’s order dated 22nd February, 2018 since he has passed away. Petitioner no.2 is the

mother-in-law of respondent no.2. Respondent nos.3 and 4 are the children born out of the wedlock between respondent no.2 and respondent no.5 (husband). Learned Judicial Magistrate First Class, Pune, by order dated 15th June, 2016, issued notice to petitioner no.2 and others who are the opponents in the proceedings initiated by respondent no.2. Marriage between respondent no.2 and 5 was performed at Kolhapur on 23rd April, 2004, as per Hindu Religious rites.

3 According to petitioner, the respondents were residing in Mumbai at M-406, Tarapor Towers, Oshiwara, Andheri Mumbai from April 2012 to April 2014. Thereafter, respondent nos.2 to 5 had shifted to Pune and started residing at the address mentioned in the cause title. Respondent no.5 was offered a job at Bangalore on contractual basis. He joined the said job on 15th June, 2015. Respondent no.5 requested respondent no.2 to join him alongwith daughters at Bangalore. Respondent no.2 refused to cohabit with respondent no.5. She did not allow respondent nos.3 and 4 to join respondent no.5 at Bangalore. Respondent no.2 alongwith respondent nos.3 and 4 was living separately from respondent no.5 since April 2014, and, several attempts to reconcile were turned futile. On 25th November, 2015, respondent no.2 filed petition

bearing E No.190 of 2015, before the Family Court, Pune, against respondent no.5, seeking maintenance for herself as well as respondent nos.3 and 4 under Section 125 of the Code of Criminal Procedure. According to the petitioner, during the pendency of the petition, the Family Court referred the parties on Mediation on 18th June, 2014. However, on 24th June, 2016, the petitioner received notice under Section 13(1) of the DV Act, directing her to appear before the Court on 30th June, 2016. On 21st July, 2016, the application was preferred viz. Misc. Civil Application No.205 of 2016, before this Court seeking transfer of proceedings viz. Criminal Misc. Application No.1939 of 2016, then pending before the learned JMFC, Pune, to the Family Court at Pune, before whom the respondent no.2 had filed petition E No.190 of 2015, against respondent no.5 for maintenance under the provisions of Section 125 of Cr.P.C. By order dated 7th September, 2016, this Court allowed the said application.

4 The grievance of respondent no.2 which emerges from the application preferred by her under Section 12 of the DV Act, is as follows:

(a) After the marriage of respondent no.2 with respondent no.5,

they stayed together at Pune. Respondent no.2 also accompanied respondent no.5 at Mumbai, Bangalore and Delhi, on account of his employment. Two daughters were born to them on 1st January, 2007 and 14th January, 2011. Both the daughters are residing with respondent no.2. After the marriage, till September 2013, respondent no.2 had stayed alongwith the opponents at M-406, Tarapur Towers, Oshiwara, Andheri, Mumbai. The said flat is in the name of respondent no.5. Since April 2014, respondent no.2 and respondent no.5 started residing separately. Respondent no.2 started residing at the said flat premises along with respondent nos.3 and 4. The flat premises is exclusively in the name of respondent no.5.

- (b) The opponents ill treated respondent no.2 repeatedly. She was subjected to harassment. Respondent no.5 has also threatened her of dire consequences. It was not possible for respondent no.2 to live along with respondent no.5 on account of apprehension of danger from him. The opponents had a quarrel with respondent no.2 on account of her residing at the premises in Mumbai. The opponents conspired to expel respondent no.2 from the premises at

Mumbai. They pretended that they have a solution to prevent the quarrels between respondent no.2 and respondent no.5 and pursued her that she should stay in the premises at Pune along with her daughters.

- (c) Respondent No.5 had dropped respondent nos.2 and 3 at the premises at Pune in April 2014. However the respondent no.5 started residing at Sopanbag Pune which was in the name of her father in law alongwith opponent nos.2 and 3. Respondent no.2 realized that the flat premises at Mumbai were valuable, and, therefore, respondent no.2 made to vacate the flat premises.
- (d) Respondent no.2 filed proceedings for maintenance under Section 125 of the Cr.P.C. by preferring petition E No.190 of 2015. The parties were sent for Mediation, however, there was no response from respondent no.5. However on 25th February, 2016, respondent no.5 submitted before the Counselor that the premises which is occupied by respondent no.2 to 3, were gifted to his mother (petitioner no.2), by executing Gift Deed.

- (e) Respondent no.2 was shocked after learning about the said fact. It was, therefore, clear that respondent no.2 was made to vacate the premises at Mumbai under the garb of solution to their disputes, and, thereafter, she was dropped at Pune, which premises was subsequently gifted to opponent no.3 with malafide intention to deprive respondent nos.2 to 3 of their residence.
- (f) It was also alleged that respondent no.5 has neglected to pay the maintenance and even the school fees of the children. Respondent no.2 had sought several reliefs in the proceedings under the provisions of Sections 18 and 19 of DV Act. Respondent no.2 has prayed that the opponents be restrained from causing any domestic violence to her. It is also prayed that the opponents be restrained from creating any third party interest in respect to the property which is gifted to opponent no.3 by opponent no.1. and also prayed for residential orders and maintenance under Sections 19 and 20 of the DV Act.
- (g) The application under Section 12 of the DV Act is filed on 29th April, 2016. Trial Court took the cognizance of the said

application and issued notice to the opponents therein on 15th June, 2016.

6 Mr.Ajinkya Palav, learned advocate appearing for the petitioner made following submissions: `

- (i) The application preferred by respondent no.2 by invoking provisions of DV Act is clearly an abuse of process of law. Respondent no.2 has not made out case of Domestic Violence against the petitioner in her application. She has not referred to any incident to substantiate her case which would fall under the purview of Section 3 of the DV Act.
- (ii) The application preferred by respondent no.2 vaguely mentions alleged physical, mental and emotional abuse caused to her by the opponents, but, the application nowhere mentions any specific allegation about any restriction, prohibition or deprivation of any act on the part of the petitioner at particular time or period reasonably recent in point of time before filing the said application.
- (iii) The incidents referred to by respondent no.2 in the

application does not show any cause of action to constitute Domestic Violence caused by petitioner to respondent no.2 and in turn clearly amounts to abuse of process of court by impleading her in the said application as opponent.

(iv) There was no domestic relationship between respondent no.2 and the petitioner, as contemplated under the definition of Domestic Relationship mentioned in the DV Act. Domestic relationship arises between two or more persons who have lived together in a shared household at any point of time. But in this case, after the marriage between respondent no.2 and respondent no.5 in the year 2004, respondent no.2 lived only for a period of two weeks with the petitioner as a ritual, and, thereafter, respondent no.2 lived only with respondent no.5 till 2014. It is further submitted that the application was preferred belatedly in the year 2016, which does not disclose any cause of action that would constitute domestic violence.

(v) Respondent no.2 never shared household with petitioner after her marriage with respondent no.5. In order to constitute a joint family, it is necessary that person who

alleges domestic violence must have lived in a shared house under one head. The petitioner along with her husband was staying separately at Pune post the marriage of respondent no.2 and 5. Therefore, there was no domestic relations between the petitioner and respondent no.2.

- (vi) To constitute the act of Domestic violence under the Act of 2005, respondent no.2, is required to fulfill the necessary ingredients provided in the definition under Section 3 of the said Act. The averments in the application does not fulfill the requirement of the said definition. Mr.Palav in support of his submissions relied upon decision of the Division Bench in the case of ***Devanand Wankhede and others Vs. State of Maharashtra and Another¹***.

7 Mr.Shriram Kulkarni, the counsel representing respondent no.2 on the contrary submitted that there is sufficient evidence on record to support the application under the DV Act. It is submitted that the instances mentioned in the application preferred by respondent no.2, clearly spelt out the requirement of the domestic violence as enumerated under the provisions of DV

1 2015 All MR Cri.3618.

Act. It is further submitted that the averment in the application also establishes the domestic relationship between the parties. Respondent no.2 has stated that she had stayed alongwith the opponents. It is further submitted that even the opponents had admitted that for some period of time after the marriage as a ritual respondent no.2 had stayed with them. Mr. Kulkarni further submitted that the averements in the application preferred by respondent no.2 are sufficient to take cognizance of the said proceedings and respondent no.2 will have to be permitted to adduce the evidence. At this stage, the proceedings initiated by her should not be knocked down. Respondent no.2 is being ill-treated and harassed by the opponents. It is further submitted that the opponents including petitioner had conspired to oust respondent no.2 from the premises situated at Mumbai and she was persuaded under the garb of the maintenance of harmony and she was dropped at the premises in Pune, which were gifted to the petitioner herein by respondent no.5. This shows that the opponents had engineered to deprive respondent no.2 of her residence. It is submitted that in view of execution of gift deed and the ousting of respondent no.2 from the premises in Mumbai, the petitioner herein will be the necessary party. Respondent no.2 had prayed for the reliefs in the form of restraint from causing

domestic violence, residence order and maintenance order. Looking in to the reliefs which are prayed by respondent no.2, the petitioner cannot be absolved from the said proceedings.

8 Having heard both the sides, I have also perused the documents on record. On perusal of the application preferred by respondent no.2, before the Court of JMFC, Pune, under Section 12 of the DV Act, it appears that she has attributed acts to the opponents in the said application. In the application, it is stated that after the marriage, all the opponents have caused physical and mental harassment to respondent no.2. Apart from the allegations that the harassment was caused to respondent no.2, which amounts to domestic violence, it is also stated that opponents had represented respondent no.2 to shift to Pune under the garb of settlement, and, it was further noticed that the premises which was occupied by respondent no.2 at Pune, is being gifted by respondent no.5 to the petitioner herein. Taking into consideration the nature of reliefs sought by respondent no.2 in the application under the DV Act, petitioner would be a necessary party and the proceedings against her cannot be quashed and set aside. The averments made in the application under Section 12 of the DV Act, are required to be tested in evidence and, at this stage, the submissions of the

advocate for the petitioner that there was no domestic relationship or the acts do not constitute domestic violence, cannot be accepted. The petitioner will have an opportunity to defend herself during the course of proceedings before the trial Court. In the decision of this Court relied upon by the learned advocate for the petitioner, the proceedings were quashed by this Court in exercise of powers under Section 482 of the Cr.P.C. on the ground that the complainant had only mentioned the relationship between the applicants, and, thereafter, general statements against all the opponents is made about alleged mental and physical harassment and nothing more. There were no specific allegations against the relatives of husband to attract the provisions of the DV Act. In the factual matrix of the said case, it was apparent that the applicants before the Court were as such not related in such a manner that the provisions of the DV Act could be invoked against them. In the complaint, only relationship of the said applicant was mentioned, and, thereafter, a general statement was made against all the non-applications that they have caused mental and physical harassment and nothing more. The Court therefore observed that so far as the provisions of DV Act are concerned, the complainant may have grievance against her husband and in-laws but to pull the other relatives from some other place, namely, Akot and Dayapur in the

litigation by filing a private complaint under the DV Act, is an abuse of process of Court. In the circumstances, it can be seen that the factual aspects of the said matter were completely different and the same are not applicable in the present case. Considering the averments made in the application preferred by respondent no.2, I find that no case is made out to exercise the powers under Section 482 of Cr.P.C. and, the petition deserves to be dismissed.

9 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Writ Petition No.4298 of 2016, is dismissed;
- (ii) The trial Court shall not be influenced by the observations made in this order at the time of trial.

(PRAKASH D. NAIK, J.)